

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

In re: Calvin J. Green,

Debtor.

Case No. 05-45463

Chapter 13

Hon. Marci B. McIvor

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OPINION SUSTAINING IN PART TRUSTEE'S OBJECTIONS TO DEBTOR'S  
COUNSEL'S FIRST APPLICATION FOR COMPENSATION

This matter is before the Court on the Trustee's Objections to Debtor's Counsel's First Application for Compensation for Services Rendered Pre-Confirmation Over \$1,000.00. Debtor's Counsel seeks fees of \$2,769.00 and expenses of \$75.00 for a total award of \$2,844.00. For the reasons stated in this Opinion, the Trustee's Objections are sustained in part and Counsel is awarded total fees of \$ 780.00 and expenses of \$75.00 for a total award of \$ 855.00.

Background

Debtor filed his first voluntary chapter 13 bankruptcy petition on April 30, 2004 (case no. 04-52698). It appears that case was dismissed on July 29, 2004 based on Debtor's failure to appear for the first meeting of creditors.

Debtor filed a second voluntary chapter 13 petition on August 30, 2004 (case no. 04-64475). Based on the Bankruptcy Rule 2004 examination of the Debtor, the Trustee in that case filed lengthy objections to confirmation based on extensive errors and omissions in Debtor's Schedules and Statement of Financial Affairs. The case was dismissed on November 19, 2004. The dismissal was based, in part, on Debtor's failure to file a 2003 tax return and failure to appear at the Confirmation Hearing.

Debtor filed the present voluntary chapter 13 petition on February 23, 2005. A Bankruptcy Rule 2004 examination was held and once again revealed significant errors and omissions in Debtor's Schedules and Statement of Financial Affairs. Many of the errors and omissions were repeated from Debtor's prior case and were expressly raised in the Trustee's Objections to Confirmation in the prior case. As a result of the repeated errors and omissions, the Trustee filed a Motion for Dismissal of the present case based on bad faith. While Debtor's Counsel initially objected to that Motion, he withdrew the Objections and the case was dismissed on August 29, 2005.

On September 7, 2005, Debtor's Counsel filed the present Motion for Compensation. The Trustee Objects to the fees as unreasonable and excessive in light of the services rendered. The Trustee contends that the requested fees should be denied in their entirety because Debtor's Counsel knowingly filed Schedules and Statements that were materially inaccurate. According to the Trustee:

Counsel filed schedules and Statement of Financial Affairs which counsel actually knew were incorrect and incomplete. Many of the omissions had been expressly pointed out to counsel at the 2004 Examination taken in debtor's second case and were expressly set forth in Trustee's Supplemental Objections filed in debtor's second case. Those omissions were further pointed out in Debtor's 2004 Examination in this case and in the Trustee's Objections to Confirmation filed in this case. Notwithstanding counsel's actual knowledge of these errors and omissions, counsel failed to insure that debtor's schedules and Statement of Financial Affairs were accurate and failed to take any steps to correct any inaccuracies once those inaccuracies were pointed out. Thus, counsel has fallen below any acceptable standard of care in this case and should be denied all compensation.

Trustee's Objection, ¶ 7.

#### Standard for Fee Awards in Bankruptcy

A court has the duty to review all fee applications, regardless of whether an

objection has been filed, in order to protect the assets of the estate for the benefit of the creditors. 11 U.S.C. § 330(a)(2); *In re Bush*, 131 B.R. 364, 365 (Bankr. W.D. Mich. 1991).

A bankruptcy court has broad discretion in determining fee awards. *Manufacturers Nat'l Bank v. Auto Specialities Mfg. Co. (In re Auto Specialities Mfg. Co.)*, 18 F.3d 358 (6<sup>th</sup> Cir. 1994).

Section 330(a)(1) of the Bankruptcy Code provides that the court may award an attorney reasonable compensation for actual, necessary services rendered. 11 U.S.C. § 330(a)(1). Section 330(a) provides, in pertinent part:

(1) After notice to the parties in interest and the United States Trustee and a hearing, and subject to sections 326, 328, and 329, the court may award to a trustee, an examiner, a professional person employed under section 327 or 1103 --

- (A) reasonable compensation for actual, necessary services rendered by the trustee, examiner, professional person, or attorney and by any para-professional personal employed by any such person; and
- (B) reimbursement for actual, necessary expenses.

(2) The court may, on its own motion or on the motion of the United States Trustee, the United States Trustee for the District or Region, the trustee for the estate, or any other party in interest, award compensation that is less than the amount of compensation that is requested.

(3) In determining the amount of reasonable compensation to be awarded, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant facts, including

- (A) the time spent on such services;
- (B) the rates charged for such services;
- (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;

(D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue or task addressed; and

(E) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

(4)(A) Except as provided in subparagraph (B), the court shall not allow compensation for --

(i) unnecessary duplication of services; or

(ii) services that were not --

(I) reasonably likely to benefit the debtor's estate, or;  
(II) necessary to the administration of the case.

11 U.S.C. § 330(a) (emphasis added).

To summarize, 11 U.S.C. § 330(a) requires that requested fees must meet three conditions. The fees must be: (1) reasonable; (2) incurred for services that were actually rendered; and (3) incurred for services that were necessary. *In re Allied Computer Repair, Inc.*, 202 B.R. 877 (Bankr. W.D. Ky. 1996).

The Sixth Circuit has adopted a "lodestar method" for actually applying the requirements set forth in 11 U.S.C. § 330. *In re Boddy*, 950 F.2d 334, 337 (6<sup>th</sup> Cir. 1991).

The lodestar method requires that the court first determine a reasonable hourly rate, and then multiply the rate times the reasonable number of hours expended to perform actual, necessary services. The Court may "then determine whether a global reduction or enhancement of the fees is in order." *In re Atwell*, 148 B.R. 483, 492-93 (W.D. Ky. 1993).

The ability to review fee applications in the context of each individual case "permits the Court to balance the following two competing interests: (1) rewarding the attorney

practicing bankruptcy on a level commensurate with other areas of practice; against (2) the need to encourage cost-conscious administration.” *Allied Computer Repair, Inc.*, 202 B.R. at 884-85. The burden of proof is upon the applicant to justify the requested fees. *In re Hamilton Hardware Co., Inc.*, 11 B.R. 326 (Bankr. E.D. Mich. 1981).

The Court agrees with the Trustee that Debtor’s Counsel’s work in the present case was, at best, very sloppy. While Debtor may have had the right to file the present (third) petition, once the Trustee raised specific concerns regarding the Schedules and Statements filed in the prior case, Debtor’s Counsel had a duty to either address those concerns or advise Debtor that the case could not be re-filed. Debtor’s Counsel could not reasonably re-file a new case while ignoring the concerns regarding accuracy and full disclosure of information raised by the Trustee in the prior case. Unfortunately, the similarity between the documents filed in all three cases suggests that Debtor’s counsel did exactly that - he filed a third case without making any effort to resolve the issues raised in the prior cases.

While the Court has serious concerns regarding the schedules filed in the present case, the Court finds that the Trustee’s objection to the payment of all fees is too harsh. Counsel provided some service to Debtor and deserves to be compensated for reasonable and necessary services. Having reviewed the Application for Fees in detail, the Court reduces the total fees requested to 4 hours at \$195.00 (\$780.00) plus costs of \$75.00 for a total award of \$855.00. This is intended to compensate Counsel for some of the actual time spent on the present case without rewarding Counsel for failing to efficiently investigate and correct (or at least explain) the inaccuracies in Debtor’s schedules. The

reduction in fees represents time billed for services which were unnecessary in light of the previous case or which appear unreasonable in light of the issues raised by the Trustee in Debtor's previous cases.

### Conclusion

For the foregoing reasons, the Trustee's Objections to Debtor's Counsel's First Application for Compensation are sustained in part and Counsel is awarded total fees of \$780.00 and expenses of \$75.00 for a total award of \$855.00.

**Entered: October 27, 2005**

/s/ Marci B. McIvor

**Marci B. McIvor**

**United States Bankruptcy Judge**